

### **REMARKS**

This application has been reviewed in light of the Office Action dated September 29, 2009. Claims 8-10, 13, 15 and 16 are presented for examination, of which Claim 8 is in independent form. Claims 1-7, 11-12, 14 and 17-20 have been cancelled without prejudice or disclaimer of the subject matter presented therein. Claims 8-10, 13, 15 and 16 have been amended to define Applicant's invention more clearly. Favorable reconsideration of the present application in light of the instant amendments and remarks is respectfully requested.

### **Rejections under 35 U.S.C. § 112**

Claims 8 - 16 are rejected under 35 U.S.C. § 112 as allegedly being indefinite. Applicant respectfully submits that the present claims meet all the requirements of §112 for the reasons set forth below.

The Office Action alleges that the term "pasty" in claim 8 is indefinite. While Applicant respectfully disagrees, Claim 8 has been amended to delete "pasty" and instead recite, "...preparing a chocolate mix in paste or liquid form," which is supported, *inter alia*, at page 8, lines 18-21 of the published international application. It is respectfully submitted that one skilled in the art understands the meaning of "paste."

The Office Action alleges that the phrase, "micro eras bubbles" in claim 8 is indefinite. Applicant has corrected the typographical error. In addition, Amended claim 8 further defines the size of the bubbles as "having an average diameter of less than 25 microns," which is supported, *inter alia*, at page 10, lines 25-26.

The Office Action alleges that the term "chilled" in claim 8 is indefinite. While Applicant respectfully disagrees, Claim 8 has been amended to recite that the moulding rolls are

“chilled to a temperature in a range of -18°C to -15°C,” which is supported, *inter alia*, at page 8, lines 12-13.

The Office Action alleges that the term “sugar-based coating” in claim 8 is indefinite. Claim 8 and its dependent claim 16 are amended to recite instead “sugar-based shell coating.” The application of a sugar-based shell coating is conventional and described at page 11, lines 21-32 and page 15, lines 8-19 of the published international application. Sugar-based shell coatings are well-known in the art, as exemplified by the coatings on M&M’s® and SMARTIES®.

The Office Action alleges that the term “shelf-stable” in claim 8 is indefinite. Applicant disagrees, and notes that stability is discussed, *inter alia*, at page 13, lines 21-33. However, solely to expedite prosecution, “shelf-stable” is deleted from claim 8.

The Office Action alleges that the term “rapid” of the phrase “rapid mixing” in claim 9 is indefinite. The term “rapid” has been deleted from claim 9 and its dependent claim 10. Accordingly, this rejection is moot.

The Office Action alleges that the phrase “approximate constant thickness” in claim 15 is indefinite. One skilled in the art would appreciate that chocolate slabs (*e.g.* bars) typically have a constant thickness but minor variations in the thickness can occur in the manufacturing process. However, solely to expedite prosecution, Applicant deletes the term “approximate” from claim 15. Minor process variations still fall within the scope of amended claim 15, and all claims herein.

#### **Rejection under 35 U.S.C. § 102(b)**

Claims 8 - 11 and 16 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Bouette (US 4,272,558) (“Bouette”). Claim 11 is canceled without prejudice,

rendering its rejection moot. It is respectfully submitted that Bouette does not anticipate present claims for at least the reasons set forth below.

The Office Action asserts that Bouette necessarily teaches that the chocolate is transferred to the mixer as a “cooled,” chocolate mix. Office Action at page 4 (stating that the chocolate was “previously prepared and cooled for storage at room temperature.”) However, this is clearly not an inherent teaching of cooling a chocolate mixture to between about 29°C to 31°C before delivering it to a mixing chamber. In fact, Bouette consistently lists cooling the chocolate after extrusion. For example, at column 2, lines 15-19, Bouette describes feeding “molten chocolate” into a mixing device, then introducing gas into the “molten chocolate,” and “dispersing” the gas to dissolve it in the “molten chocolate.” “Molten” of course denotes a hot mixture. At column 2, line 21, Bouette lists cooling chocolate to atmospheric temperature as the final step of the process. At column 3, lines 49-50 and in the Abstract, cooling the chocolate occurs after mixing and extrusion. Accordingly, Bouette does not anticipate cooling the chocolate mix to about 29°C to 31°C before delivering it to a mixing chamber.

Moreover, Bouette does not teach a diameter of the gas bubbles formed, while the instant claims recite that the “gas bubbles hav[e] an average diameter of less than 25 microns.” Nowhere does Bouette teach or suggest such a limitation.

Accordingly, the present claims are not anticipated by Bouette.

#### **Rejections under 35 U.S.C. § 103(a)**

Claims 12-14 are rejected under 35 U.S.C. 103(a) as allegedly being obvious over Bouette (US 4,272,558) in view of Brown, et al. (US 2002/0090437 A1) (“Brown”). Claims 12 and 14 are hereby cancelled without prejudice, rendering their rejection moot.

Bouette uses a sharp pressure drop to create adequate bubbles in chocolate and this clearly is different than the instantly claimed process. For example, Bouette relies on dissolving a gas in liquid chocolate to uniformly disperse the gas throughout the chocolate, then suddenly reducing the pressure to form bubbles dispersed evenly. *See, e.g.,* Bouette at column 1, lines 45-9.

Bouette fails to teach or suggest the presently claimed method of forming the desired bubbles by mixing a cooled chocolate mix with a gas, much less cooling the chocolate mix to about 29°C to 31°C, or forming bubbles of an average diameter of less than 25 or even 17 microns. Brown fails to cure the deficiencies of Bouette at least because Brown also fails to teach cooling the chocolate to a range of about 29°C to 31°C before delivering it to a mixing chamber, or forming gas bubbles having an average diameter of less than 25 microns, much less having an average diameter of 17 microns. The present specification teaches that cooling the chocolate prior to mixing is advantageous, stating, “By cooling the chocolate mix, the mixing head speed can be increased, which results in an increase of number of and smaller-sized, bubbles of air.” Page 12, lines 27-29 of the specification as filed, [0061] of the application as published.

The Office Action states that adjusting “the bubble size was known and routine determination of one of ordinary skill in the art as taught by Bouette...” Office Action at page 6. Although Brown mentions forming bubbles with a diameter of less than 60 microns, nowhere does Brown, or Bouette, teach how to create bubbles with the claimed average bubble diameter of less than 25 microns, much less 17 microns. Only the present application teaches how to reach such small diameter gas bubbles, and that the process steps of the invention achieve an advantageously stable sugar-based shell coated confectionary having a chocolate core. (See

comparative example 1 at page 15, line 26 to page 17, line 4). Accordingly, it is respectfully submitted that the art of record would not have suggested claims 13, or any other claim in the case, with a responsible expectation of the advantages achieved by the present process.

Claim 15 is rejected under 35 U.S.C. 103(a) as allegedly being obvious over Bouette (US 4,272,558). It respectfully submitted that Claim 15 would not have been obvious over Bouette for the same reasons that claim 8 would not have been obvious over Bouette.

### **CONCLUSION**

In view of the foregoing amendments and remarks, Applicant respectfully request favorable reconsideration and early passage to issue of the present application.

Applicant's undersigned attorney may be reached in our New York Office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address listed below.

Respectfully submitted,

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